

# CITY of NOVI CITY COUNCIL

**Agenda Item 1  
June 6, 2011**

**SUBJECT:** Approval of water and sewer monitoring agreement for Waltonwood of Novi

**SUBMITTING DEPARTMENT:** Finance/Water & Sewer

**CITY MANAGER APPROVAL:** 

**BACKGROUND INFORMATION:**

In January of 2005, Waltonwood of Novi entered into a Monitoring Agreement with the City. Waltonwood was seeking to have water and sewer connection fees potentially reduced and re-assessed based on their actual consumption upon completion of the monitoring period. In 2009, it was determined that based on actual water consumption for the original monitoring period the additional water and sewer connection fees were due totaling \$6,294. At that time, Waltonwood requested to have their consumption re-monitored upon installation of a well to be used for irrigation purposes but to date, the well has not been installed. The monitoring period has expired and the payment is due, pursuant to Section 34-21 of the Novi Code of Ordinance the charges were considered delinquent and Waltonwood was notified that the delinquent fees would be placed on the 2011 summer tax bill. Waltonwood installed a well that subsequently failed and has requested another extension to allow more time for the new permit with Oakland County to be approved and the well to be installed. Waltonwood has agreed to submit payment for the additional fees but have requested that if the well is installed by December 31, 2011, the additional fees would be refunded and the connection fees would be re-assessed after the extended monitoring period.

In the past, the City has allowed for an extension of the monitoring period in situations where irrigation seems to impact the consumption significantly and the water user has installed a well or installed a separate meter for irrigation. Therefore, staff recommends approval of the monitoring agreement.

**RECOMMENDED ACTION:** Approval of the monitoring agreement for Waltonwood of Novi

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Fischer				
Council Member Margolis				

	1	2	Y	N
Council Member Mutch				
Council Member Staudt				
Council Member Wrobel				

June 1, 2011

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THOMAS R. SCHULTZ  
Direct: 248-539-2847  
tschultz@secretwardle.com

Clay Pearson, City Manager  
City of Novi  
45175 W. Ten Mile Road  
Novi, MI 48375

Re: *Waltonwood Monitoring Agreement*

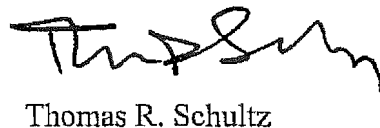
Dear Mr. Pearson:

Our office has reviewed the proposed Monitoring Agreement between the City and Waltonwood for the June 6, 2011 City Council agenda. Waltonwood and the City had a prior Monitoring Agreement starting January, 2005, at the conclusion of which Waltonwood was found to owe an additional \$6,293.53 (which it has paid). Waltonwood now wants to install an irrigation well that it hopes will reduce its metered water consumption, which could in turn reduce its water and sewer tap fees. It is therefore asking for a *new* Monitoring Agreement starting after the well is installed. We believe that the City Council is authorized to grant Waltonwood's request (although not obligated to do so). Because the document deviates from the approved form, we agree that it needs to go on a Council agenda for approval.

The only modification that is required in light of the request and the property's history is insertion of a new Paragraph 9, which lays out the approach recommended by City Staff. Note that upon installation of the well Waltonwood would be entitled to return of the additional \$6,293.53, with the balance of any further reductions pending completion of the new Monitoring Agreement.

If you have any questions, please feel free to call.

Very truly yours,



Thomas R. Schultz

cc: Victor Cardenas, Assistant City Manager  
Maryanne Cornelius, City Clerk  
Kathy Smith-Roy, Finance Director

1653644

## MONITORING AGREEMENT

**THIS AGREEMENT** made this 6th day of June, 2011 by and between the **City of Novi**, a Michigan municipal corporation

and Waltonwood of Novi at 27475 Huron Circle, Novi, Michigan 48375,  
(property owner's legal corporate name & address)

(hereinafter referred to as **USER**) as follows:

**WHEREAS**, the **City of Novi** has adopted by resolution unit factors for water and sewer debt service charges, connection charges, availability charges, and lateral availability fees; and

**WHEREAS**, the condition marked below exists:

- The user believes that the unit factor is unfair to the **USER**, or
- The **City of Novi's** unit factor chart does not show this type of user; and/or
- Addition, or change in operation

**WHEREAS**, pursuant to Resolution dated February 24, 1992 the **USER** has the option of entering into this agreement if he believes that said unit factor, adopted by resolution is unfair; or the **City of Novi** may request the user to enter into an agreement if there is no unit factor for said type of user; or a building addition, or change in operation is taking place.

**NOW, THEREFORE**, it is agreed as follows:

1. That the **City of Novi** will assign 85.583 estimated tap unit(s) to Waltonwood of Novi at 27475 Huron Circle, Novi, Michigan 48375.
2. That the **City of Novi**, at the sole expense of the **USER**, will install a meter for measuring the water used by the **USER**. The type of meter shall be in the sole discretion of the **City of Novi's** Water Department Superintendent.
3. That when three (3) full years of meter readings have been obtained, or at a sooner time if the **City of Novi** requests it, the **City** will re-assess the tap units assigned to said facility. The assignment will be based on the four highest consecutive quarters.
4. That the number of tap units will be based upon the equivalent of 115,000 gallons per year for one tap unit or whatever method the **City of Novi** has adopted by resolution for determining the basis of one tap unit at the time the year has expired or at such time the **City** has taken the meter reading for re-assessing the tap units assigned to said facility.

5. That the **USER** agrees to pay for the determined tap unit difference at such time notice is given to the **USER** by the **City of Novi**. The tap unit cost shall be in accordance with the ordinance of the **City of Novi** in such case made and provided for the use of such water and sewer facility and/or the resolution adopted pursuant to said ordinance. If the re-assessment results in reduction to the number of tap units paid by the **USER**, the **City of Novi** will refund to the **USER** the difference at a cost in accordance with the ordinance of the **City of Novi** in such case made and provided for the use of such water and sewer facility and/or the resolution adopted pursuant to said ordinance.

6. That this obligation to pay the determined tap unit difference shall be a lien against the **USER'S** property as provided in Section 21, Act 94, of the Public Acts of Michigan, 1933, as amended.

7. That anything herein to the contrary notwithstanding, the **City of Novi** shall have the right to re-meter the water so as to re-assess the tap units assigned to said facility on the same terms and conditions as provided in this Agreement if the **USER** or the use of the aforesaid property is changed subsequent to the re-assessment of the tap units assigned to said facility.

8. This Agreement contains the entire agreement of the parties, and no statement, promises, or inducements made by either party that is not contained in this written contract shall be valid or binding; and this Agreement may not be enlarged, modified, or altered except in writing signed by the parties and endorsed hereon.

9. This Agreement replaces and supercedes the prior Monitoring Agreement between the parties dated January 14<sup>th</sup>, 2005. At the expiration of that Agreement, the City determined that an additional \$6,293.53 was owed. **USER** has paid that amount to the City of Novi. **However**, **USER** has determined to install a well for irrigation, and has therefore asked that a new monitoring period be commenced. If the well is not installed by December 31<sup>st</sup>, 2011, the parties have agreed to treat the prior Monitoring Agreement is considered settled; more specifically, the City of Novi will retain the \$6,293.53 and this Monitoring Agreement becomes null and void. If the well is installed before December 31<sup>st</sup>, 2011, then the City will refund the \$6,293.53 and this Agreement will be and remain effective under the terms and conditions set forth herein.

10. It is expressly understood and agreed by the parties that this Agreement, and all stipulations and provisions contained herein, shall apply to and bind the heirs, executors, administrators, successors and assigns of the parties hereto.

11. This Agreement shall be recorded with the Oakland County Register of Deeds.

12. The cost for recording with the Register of Deeds shall be collected from the **USER**.

CITY OF NOVI, a Michigan municipal corporation,

\_\_\_\_\_  
David B. Landry  
It's: Mayor

\_\_\_\_\_  
Maryanne Cornelius  
It's: City Clerk

STATE OF MICHIGAN)  
                                  )SS  
COUNTY OF                  )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared **David B. Landry** and **Maryanne Cornelius**, to me personally known, who being by me sworn each for himself/herself say that they are respectively the **Mayor** and **City Clerk** of the City of Novi, a Municipal Corporation, which executed the within instrument by authority of the City Council and acknowledge said instrument to be the free act and deed of said Municipal Corporation.

, Notary Public

\_\_\_\_\_ County, MI

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
User - Corporation Name

By: \_\_\_\_\_  
, President

By: \_\_\_\_\_  
, Secretary

**OR,**

By: \_\_\_\_\_  
, Owner

STATE OF MICHIGAN)  
  )SS  
COUNTY OF                          )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared and

\_\_\_\_\_, to me personally known, who by me sworn each for himself/herself say that they are respectively the **President and Secretary** of the \_\_\_\_\_, which executed the within instrument by authority of the \_\_\_\_\_ and acknowledge said instrument to be the free act and deed of said \_\_\_\_\_.

\_\_\_\_\_  
, Notary Public  
\_\_\_\_\_  
County, MI  
My Commission Expires: \_\_\_\_\_

**OR,**

STATE OF MICHIGAN)  
  )SS  
COUNTY OF                          )

ON this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who by me sworn for himself/herself say that he/she is the **owner** of the \_\_\_\_\_, and acknowledge said executed instrument within to be the free act and deed of \_\_\_\_\_.

\_\_\_\_\_  
, Notary Public  
\_\_\_\_\_  
County, MI  
My Commission Expires: \_\_\_\_\_

Sid-well Number: 50-22-14-200-037

**Parcel Description:**

T1N, R8E, SEC 14 PART OF NE 1/4 OF NW 1/4 BEG AT PT DIST N 89-24-35 E 1066.73 FT & S 00-35-25 E 926 FT & S 89-24-35 W 101.37 FT & N 69-43-27 W 187.35 FT & N 48-51-29 W 195.60 FT FROM N 1/4 COR, TH S 41-08-32 W 77.17 FT, TH N 80-22-48 W 43.89 FT, TH S 41-08-24 W 65.68 FT, TH S 48-51-36 E 12 FT, TH S 41-08-24 W 34.42 FT, TH S 48-51-36 E 10 FT, TH S 41-08-24 W 56.49 FT, TH N 48-51-36 W 22 FT, TH S 41-08-24 W 40.33 FT, TH S 89-25-48 W 45.37 FT, TH S 41-08-24 W 26.12 FT, TH N 48-51-28 W 104.68 FT, TH S 41-08-32 W 182.21 FT, TH S 70-49-36 W 35.66 FT, TH S 77-59-58 W 69.27 FT, TH ALG CURVE TO LEFT, RAD 748.47 FT, CHORD BEARS N 20-34-33 W 65.68 FT, DIST OF 65.70 FT, TH N 23-05-26 W 91.03 FT, TH ALG CURVE TO RIGHT, RAD 45 FT, CHORD BEARS N 21-30-01 E 63.18 FT, DIST OF 70.04 FT, TH N 66-05-28 E 15.09 FT, TH ALG CURVE TO LEFT, RAD 283 FT, CHORD BEARS N 34-35-41 E 295.70 FT, DIST OF 311.14 FT, TH N 86-07-18 E 170.20 FT, TH ALG CURVE TO RIGHT, RAD 218.04 FT, CHORD BEARS S 71-07-13 E 168.69 FT, DIST OF 173.21 FT, TH S 48-51-29 E 147.14 FT TO BEG 3.72 A11-9-98 FR 033

**Drafted By & Return To:**

Tina Glenn  
City of Novi-Water Department  
45175 W. Ten Mile Rd.  
Novi, Michigan 48375